

**AUDIO
RARITIES**

"HITLER'S INFERNO"

2445-1

33 1/3 RPM

Words and Music of
Nazi Germany

Part One

A KINOR
RELEASE

UNBREAKABLE
VINYLITE



2445

HITLER'S INFERNO

in words, in music

1932-1945

MARCHING SONGS OF NAZI GERMANY





HITLER'S INFERNO

In words, in music

MARCHING SONGS OF NAZI GERMANY

1932-1945

contents

Adolf Hitler speaks in Rome. 1937
The crowds cheer and sing, "Deutschland Uber Alles"
The Nazi Storm Troopers sing, "Die Fahne Hoch" (Horst Wessel Lied)
The Nazi Storm Troopers sing, "Heil Hitler Dir!"
Paul Joseph Goebbels introduces Adolf Hitler. 1934

Adolf Hitler speaks in Vienna. 1939
The Nazi Storm Troopers sing, "Heil Deutschland"
The Nazi Storm Troopers sing, "Wenn Die S.S. Und Die S.A. Aufmarschieren"
The small Berlin school children sing, "Die Jugend Marschieren"
The defendants, (Goering, Hess, Von Ribbentrop, etc.) plead "Not Guilty" at the Nuremberg War Crimes Trial.



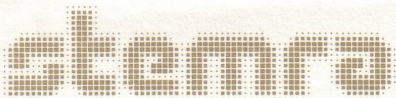
2445

Never before has this shocking material been heard in the United States. Most of these songs and speeches were taken from German radio stations after the war. Their joyous quality is frightening, when one thinks of the murder and destruction that followed. It must never happen again in the civilized world.

NARRATION BY BILL FORREST

PRODUCTION STAGED BY MARY JO DEVLIN





Stichting Stemra

Buma/Stemra-huis
Prof. E.M. Meijerslaan 3
1183 AV Amstelveen
Telefoon 020-5407911

Postbus 725 1180 AS Amstelveen
Telefax 020-5407496
KvK Amsterdam S 198521

ABN•AMRO bank 43.30.73.500
ING bank 69.73.60.016
Postbank 372484

Aangesloten bij het
Internationaal Bureau voor
Mechanisch Reproductierecht
BIEM te Parijs

INTERMEDIARY FOUNDATION OF THE
UNIVERSAL DECLARATION OF HUMAN RIGHTS
Postbus 324
5660 AH GELDROP
T.a.v. dhr. J.P. van den Wittenboer

Datum 24 maart 1994
Doorkiesnr 5407 232
Onze ref. GvL/MW
Betreft

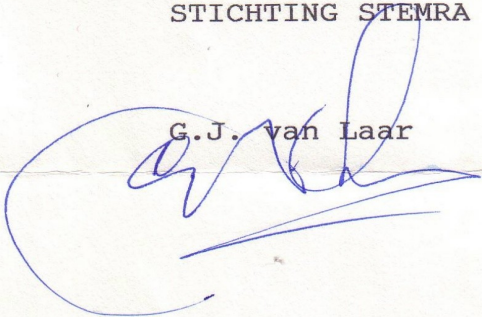
Geachte heer Van den Wittenboer,

Naar aanleiding van uw schrijven d.d. 21/3 'jl., doen wij u
hierbij het adres toekomen van onze Amerikaanse zusteror-
ganisatie, t.w.:

HARRY FOX AGENCY
205, East 42 Street
NEW YORK (N.Y. 10017)
Verenigde Staten

Met een vriendelijke groet,
STICHTING STEMRA

G.J. van Laar





THE HARRY FOX AGENCY, INC.

a subsidiary of NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

April 8, 1994

Mr. J.P. van den Wittenboer
Intermediary Foundation of the
Universal Declaration of
Human Rights
Postbus 324
5660 AH Geldrop
The Netherlands

Dear Mr. van den Wittenboer:

We are in receipt of your letter dated March 25 and regret to advise you that our database has no information on the record company AUDIO RARITIES.

However, STEMRA is the Dutch representative of our agency's repertoire, and will be able to handle any mechanical licensing and royalty issues arising from your audio documentary.

Kindest regards,

A handwritten signature in blue ink, appearing to read 'Audrey Chan', is written over the typed name.

Audrey Chan
International Relations Coordinator

cc: Edward P. Murphy
Yoshio Inomata
Frank S. Rittman



Stichting Stemra

Buma/Stemra-huis
Prof. E.M. Meijerslaan 3
1183 AV Amstelveen
Telefoon 020-5407911

Postbus 725 1180 AS Amstelveen
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Aangesloten bij het
Internationaal Bureau voor
Mechanisch Reproductierecht
BIEM te Parijs

Intermediary Foundation of the Universal Declaration of
Human Rights
Postbus 324
5660 AH GELDROP

t.a.v. de heer J.P. van de Wittenboer

Datum 24 juni 1994
Doorkiesnr 5407 418
Onze ref. JPV
Betreft Produktie in eigen beheer

Geachte heer Van de Wittenboer,

Hierbij zenden wij de door u ingezonden aanvragen voor toestemming retour. Alvorens wij deze aanvragen in behandeling nemen verzoeken wij u de naam en voornaam van componist/tekstdichter van de werken te vermelden opdat wij kunnen bepalen of deze werken tot ons repertoire behoren.

Overeenkomstig artikel 6 van de voorwaarden produktie in eigen beheer delen wij u mee dat de opnamen op rechtmatige wijze moeten zijn vervaardigd met instemming van de uitvoerende artiesten en/of met toestemming van de fonografische fabrikant, indien het om de overname van een reeds bestaande geluidsdrager gaat. Voor meer informatie over naburige rechten verwijzen wij u naar de Stichting SENA, Vaartweg 51, 1211 JE HILVERSUM, tel,: 035-244653.

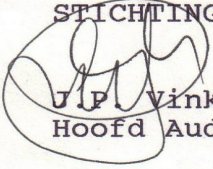
Ter uwer informatie delen wij u mee dat het copyright van NSDAP c.q. NSB repertoire voor Duitse versies berust bij de staat Beieren en voor Nederlandse versies bij de staat der Nederlanden. Stemra mag deze werken **nooit** afrekenen aan welke rechthebbende dan ook en bewerkingen zijn niet toegestaan.

Vervolgvel - 1 -
Datum 24 juni 1994
Aan de heer J.P. van de Wittenboer

Tevens bevestigen wij de ontvangst van het door u vervaardigde manuscript "De één zijn dood is de ander zijn brood" met bijlagen. Aangezien dit manuscript geen nadere informatie geeft over componist/auteur van de door u gebruikte werken sturen wij bijgaand het manuscript retour.

Wij vertrouwen erop u hiermee van dienst te zijn geweest.

Met vriendelijke groet,
STICHTING STEMRA



J.P. Vink
Hoofd Audio Produkties

c.c. Salisbury Sound B.V.

Bijlagen: 3



STICHTING TER EXPLOITATIE
VAN NABURIGE RECHTEN

Intermediary Foundation of the Universal
Declaration of Human Rights
Tav. de heer J.P. van den Wittenboer
Postbus 324
5660 AH Geldrop

Hilversum, 28 juni 1994

Geachte heer Wittenboer,

De door u gevraagde informatie vermeld in uw brief van 27 juni jl. betreffende artiest/componist/jaartal etc. van de musicassette "Hitler's Inferno" is bij Sena niet bekend. Wij zijn een organisatie die de belangen behartigt van uitvoerende kunstenaars en producenten, indien hun werk vanaf een commerciële geluidsdrager op de radio, tv of in openbare ruimten wordt afgespeeld. Voor wat betreft de gegevens van componisten kunt u terecht bij de Buma te Amstelveen.

In bovengenoemde brief maakt u melding van een brief die u aan de heer Vink van de Stichting Stemra heeft gestuurd en die als bijlage bij de brief aan Sena had moeten zitten, maar deze brief hebben wij niet van u ontvangen.

Voor uitgebreide informatie over Sena en haar doelstellingen sluit ik hierbij onze brochure in.

Mocht u nog vragen hierover hebben dan kunt u ons bereiken op tel.nr. 035 - 244653.

Met vriendelijke groet,

Marijke Remkes

Bijlage: brochure



THE HARRY FOX AGENCY, INC.
a subsidiary of NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

July 12, 1994

Mr. J.P. van den Wittenboer
I.F.U.D.H.R.
Postbox 324
5660 AH Geldrop
The Netherlands

Dear Mr. van den Wittenboer:

I am writing in response to your letter dated July 1 to Ms. Audrey Chan, who is no longer affiliated with the Harry Fox Agency, Inc.

I have researched our database and regret to inform you we have no information concerning KINOR, Audio Rarities, or the recording referenced in your letter, "Hitler's Inferno."

Sincerely,

A handwritten signature in blue ink, which appears to read 'Frank S. Rittman', is written over the typed name.

Frank S. Rittman, Esq.
International Business Administrator

cc: Edward P. Murphy
Yoshio Inomata

Advies inzake "Hitler's Inferno"

15 september 1994

De stichting Intermediary Foundation of the Universal Declaration of Human Rights¹, (hierna te noemen "de stichting"), heeft het voornemen om het werk "HITLER'S INFERNO", vastgelegd op een 33½ toeren langspeelplaat² (hierna te noemen "de plaat"), opnieuw uit te brengen op cassette en CD, in eerste instantie in Nederland.

Gelet op dit voornemen wil de stichting zich een beeld vormen over de auteursrechtelijke aspecten die verbonden zijn aan het opnieuw uitbrengen van deze plaat.

Beschrijving van de plaat.

De plaat bestaat uit 1) geluidsopnames van Nazi-liederen, van toespraken van Hitler en Goebbels en een korte geluidsopname van het Neurenberg proces (hierna te noemen "Duitse geluidsopnames") en 2) anti-fascistisch commentaar in de Engelse taal door een Amerikaanse verteller.

Volgens de plaathoes zijn de Duitse geluidsopnames na WOII uitgezonden door Duitse radiostations (volgens de stichting onder meer via kortegolfzenders die ook in Amerika te ontvangen waren).

Aangezien de plaat geen copyright notice bevat, kan niet precies bepaald worden in welk jaar deze is uitgebracht. De stichting gaat vooralsnog uit van 1945.

Beschermd werk.

De vraag of de plaat als een werk kan worden beschouwd en of daarop auteursrecht is ontstaan, moet in het algemeen overeenkomstig het territorialiteitsbeginsel beantwoord worden, d.w.z. op basis van het recht van het land waar de bescherming effectief moet zijn, dus in beginsel op basis van het Nederlands auteursrecht.

¹ Postbus 324, 5660 AH Geldrop. Geregistreerd bij de Kamer van Koophandel te Eindhoven onder nummer S92925.

² Audio Rarities LPA 2445 USA, a Kinor release.

Advies inzake "Hitler's Inferno"

15 september 1994

Naar Nederlands auteursrecht moet aangenomen worden dat de plaat te kwalificeren is als een werk van letterkunde, wetenschap of kunst in de zin van art. 1 jo. art. 10 Auteurswet (Aw). Bij deze kwalifikatie speelt een grote rol dat de plaat een eigen, oorspronkelijk karakter bezit dat het persoonlijk stempel van de maker draagt. Het feit dat de plaat voor het grootste gedeelte bestaat uit een vastlegging van Duitse geluidsopnames doet hieraan niet af. Omdat nl. de Duitse geluidsopnames in een door de maker gekozen volgorde zijn geplaatst en voorzien zijn van anti-fascistisch commentaar, is hiermede een nieuw oorspronkelijk werk ontstaan in de zin van het Nederlands auteursrecht.

Dit betekent dat de maker van de plaat of diens rechtverkrijgende op grond van art. 1 Aw het exclusieve recht heeft om de plaat openbaar te maken en te verveelvoudigen.

Onderzoek door de stichting.

De stichting heeft een onderzoek ingesteld naar de auteursrechthebbende van de plaat. In dit verband wordt gewezen op correspondentie met Stemra en haar Amerikaanse tegenhanger Harry Fox Agency, Inc. te New-York. Dit onderzoek heeft niet geleid tot de opsporing van de auteursrechthebbende. Wel kan uit informatie van Stemra afgeleid worden, dat de Staat Beieren mogelijk auteursrechthebbende van de Duitse geluidsopnames is.

Scenario I.

Indien de stichting de plaat in Nederland op cassette en/of CD uitbrengt, is het denkbaar dat de maker van de plaat of diens rechtverkrijgende zich aanmeldt en het auteursrecht op de plaat claimt. In dit geval zou nader onderzoek de geldigheid van deze claim moeten uitwijzen.

Dit betekent dat de aanmelder in eerste instantie moet aantonen dat hij als auteursrechthebbende aangemerkt dient te worden. Indien hij hierin zou slagen, is het vervolgens de vraag

Advies inzake "Hitler's Inferno"

15 september 1994

of hij i.c. zijn auteursrecht kan doen gelden, aangezien op de plaat geen copyright notice is aangebracht. Verder is het mogelijk dat zijn auteursrecht inmiddels door tijdsverloop verstreken is (50 jr. na de dood van de maker of na eerste openbaarmaking).

Indien echter uit dit nader onderzoek zou blijken dat de aanmelder inderdaad aan te merken is als auteursrechthebbende en hij zijn auteursrecht kan doen gelden, kan hij of de exploitatie van de plaat door de stichting verbieden of aan de stichting toestemming verlenen voor de exploitatie in ruil voor een vergoeding (licentie).

Scenario II.

Indien de stichting de plaat in Nederland op cassette en/of CD uitbrengt, moet -gelet op de informatie verkregen van Stemra- eveneens rekening gehouden worden met de mogelijkheid, dat de Staat Beieren zich aanmeldt en het auteursrecht en de daarbij behorende exclusieve exploitatierechten op de *originele Duitse geluidsopnames* claimt. Ook in dit geval zou nader onderzoek de geldigheid van deze claim moeten uitwijzen.

Dit betekent dat de Staat Beieren in ieder geval zou moeten aantonen dat de Duitse geluidsopnames, die vlak na WOII door Duitse radiostations zijn uitgezonden, auteursrechtelijk beschermd zijn. Naar huidig Nederlands auteursrecht moet in dit verband aangenomen worden dat de kans groot is dat de destijds uitgezonden Duitse geluidsopnames voor auteursrechtelijke bescherming in aanmerking komen.

Echter, indien vast zou komen te staan dat de Duitse geluidsopnames inderdaad auteursrechtelijk beschermd zijn, kan de stichting op goede gronden aanvoeren dat er i.c. sprake moet zijn van een beperking van het auteursrecht op de uitgezonden Duitse geluidsopnames. De stichting kan nl. het standpunt innemen dat de Duitse geluidsopnames destijds uitgezonden werden door

Advies inzake "Hitler's Inferno"

15 september 1994

en/of vanwege de openbare macht en derhalve in beginsel publiek domein zijn.

In dit verband stelt art. 15b Aw dat: "Als inbreuk op het auteursrecht op een door of vanwege de openbare macht openbaar gemaakt werk van letterkunde, wetenschap of kunst wordt niet beschouwd verdere openbaarmaking of verveelvoudiging daarvan, tenzij het auteursrecht, hetzij in het algemeen bij wet, besluit of verordening, hetzij in een bepaald geval blijkens mededeling op het werk zelf of bij openbaarmaking daarvan uitdrukkelijk is voorbehouden ..."

Uit een kort onderzoek van het destijds geldende Duitse auteursrecht is vooralsnog niet gebleken van een wet, besluit of verordening op grond waarvan het auteursrecht op destijds door en/of vanwege de openbare macht uitgezonden Duitse geluidsopnames uitdrukkelijk is voorbehouden. Evenmin is op dit moment aannemelijk dat het auteursrecht destijds bij uitzending van de Duitse geluidsopnames uitdrukkelijk is voorbehouden. Dit betekent dat een beroep van de stichting op de beperking van het auteursrecht ingevolge art. 15b Aw -behoudens tegenbewijs van de Staat Beieren- een **goede kans van slagen**³ zou hebben.

Echter, indien dit beroep niet zou slagen, moet rekening gehouden worden met de mogelijkheid dat de Staat Beieren als auteursrechthebbende op de destijds uitgezonden Duitse geluidsopnames verdere exploitatie kan verbieden of kan onderwerpen aan haar toestemming.

Conclusies.

Door verdere exploitatie van de plaat zou de stichting geconfronteerd kunnen worden met auteursrechtelijke aanspraken van de maker van de plaat of diens rechtverkrijgende. In deze situatie kan de stichting een beroep doen op het ontbreken van een copyright notice en mogelijkerwijze op de afloop van de beschermingsduur van het auteursrecht.

³ Vetgedrukt op verzoek van de stichting.

Advies inzake "Hitler's Inferno"

15 september 1994

Verder zou de stichting geconfronteerd kunnen worden met auteursrechtelijke aanspraken van de Staat Beieren. In deze situatie kan de stichting een beroep doen op art. 15b Aw.

Indien in een eventuele rechterlijke procedure de genoemde verweren van de stichting niet gehonoreerd zouden worden, kan de stichting haar voornemen om de plaat in Nederland op cassette en/of CD uit te brengen slechts realiseren door middel van een licentie van de auteursrechthebbende.

De beoordeling door de stichting van de vraag of verdere exploitatie van de plaat een **goede kans van slagen**⁴ heeft, zal dienen te geschieden met inachtneming van de hiervoor genoemde risico's die verbonden zijn aan deze verdere exploitatie.

Wde Zeeuw.

Mr. W. de Zeeuw.

⁴ Vetgedrukt op verzoek van de stichting.



Stichting Stemra

Buma/Stemra-huis
Prof. E.M. Meijerslaan 3
1183 AV Amstelveen
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Postbus 725 1180 AS Amstelveen
Telefax 020-5407496
KvK Amsterdam S 198521

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Aangesloten bij het
Internationaal Bureau voor
Mechanisch Reproductierecht
BIEM te Parijs

Intermediary Foundation of the Universal Declaration of
Human Rights
Postbus 324
5660 AH GELDROP

t.a.v. de heer J.P. van de Wittenboer

Datum 17 oktober 1994
Doorkiesnr 5407 418/242
Onze ref. JPV/Jolanda van Dam
Betreft Produktie in eigen beheer

Geachte heer van de Wittenboer,

Bij deze bevestigen wij het ontvangst van het juridisch
rapport inzake "Hitler's Inferno".

In het vertrouwen u hiermee van dienst te zijn geweest.

Met vriendelijke groeten,
STICHTING STEMRA

J.P. Vink



THE HARRY FOX AGENCY, INC.
a subsidiary of NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

October 17, 1995

Mr. J.P. van den Wittenboer
Intermediary Foundation of the Universal Declaration of Human Rights
Postbox 324
5660 AH Geldrop
THE NETHERLANDS

Re: *Hitler's Inferno Project*

Dear Mr. van den Wittenboer:

Thank you for your letter dated August 16th; please excuse my delay in responding to your inquiry. I regret that we cannot provide you with any recommendations on U.S. record companies who may wish to act as your distributor. I am, however, enclosing a section from the 1995 Billboard International Buyer's Guide in the event you wish to contact any of them directly.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Frank S. Rittman', is written over the typed name.

Frank S. Rittman
International Business Administrator

encl.

cc: Edward P. Murphy
Yoshio Inomata

PAYTON
BUSINESS LEGAL ADVICE

Vestdijk 9
5611 CA Eindhoven
The Netherlands
Tel +31-40-465117
Fax +31-40-455202

John W. Payton, Esq.
Mr. W. de Zeeuw
Dutch Counsel
Mr. G. H. M. Rooijackers
Of Counsel

Intermediary Foundation of the
Universal Declaration of Human Rights
Postbus 324
5660 AH Geldrop
T.a.v. de heer J.P. van den Wittenboer.

Declaratie: 940183

28 juni 1994.

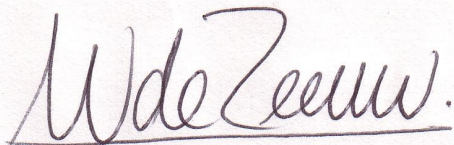
Geachte heer Van den Wittenboer,

Gelieve hierbij mijn declaratie aan te treffen naar aanleiding van ons gesprek van vandaag, waarin ik u geadviseerd heb met betrekking tot de auteursrechtelijke aspecten van een CD release van "Hitler's Inferno".

Advieskosten	f	200.00	
Administratiekosten 5%	f	<u>10.00</u>	+
Totaal	f	210.00	
BTW 17.5%	f	<u>36.75</u>	+
Totaal verschuldigd	f	246.75	
		=====	

Ik verzoek u om dit bedrag binnen 30 dagen na dagtekening te voldoen door overmaking naar de Rabobank, rek.nr. 11.37.58.510, onder vermelding van bovenstaand declaratienummer.

Hoogachtend,



Mr. W. de Zeeuw.

PAYTON
BUSINESS LEGAL ADVICE

Vestdijk 9
5611 CA Eindhoven
The Netherlands
Tel +31-40-465117
Fax +31-40-455202

John W. Payton, Esq.
Mr. W. de Zeeuw
Dutch Counsel
Mr. G. H. M. Rooijackers
Of Counsel

Intermediary Foundation of the
Universal Declaration of Human Rights
Postbus 324
5660 AH Geldrop
T.a.v. de heer J.P. van den Wittenboer.

Declaratie: 940193

25 augustus 1994.

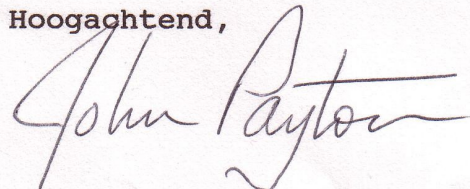
Geachte heer Van den Wittenboer,

Gelieve hierbij een specificatie aan te treffen met betrekking tot de door ons verleende diensten in de afgelopen maand.

Kosten dienstverlening	f	483.00
BTW 17.5%	f	<u>84.53</u> +
Totaal verschuldigd	f	567.53 =====

Ik verzoek u om dit bedrag binnen 30 dagen na dagtekening te voldoen door overmaking naar de Rabobank, rek.nr. 11.37.58.510, onder vermelding van bovenstaand declaratienummer.

Hoogachtend,



John W. Payton.

PAYTON
BUSINESS LEGAL ADVICE

Specificatie: 26/07/94 - 25/08/94

Zaak

Uren
Mr. de Zeeuw

Hitler's inferno

- gesprek 27/07/94	1.30
- voorbereiding advies	1.00

Totaal uren	2.30
Uurtarief	f 200.00
Subtotaal	f 460.00
Administratiekosten 5%	f 23.00 +
Kosten dienstverlening	f 483.00
BTW 17.5%	f 84.53 +
Totaal verschuldigd	f 567.53
	=====

PAYTON
BUSINESS LEGAL ADVICE

Vestdijk 9
5611 CA Eindhoven
The Netherlands
Tel +31-40-465117
Fax +31-40-455202

John W. Payton, Esq.
Mr. W. de Zeeuw
Dutch Counsel
Mr. G. H. M. Rooijackers
Of Counsel

I.F.U.D.H.R.
Postbus 324
5660 AH Geldrop
T.a.v. de heer van den Wittenboer.

Declaratie: 940203

26 September 1994.

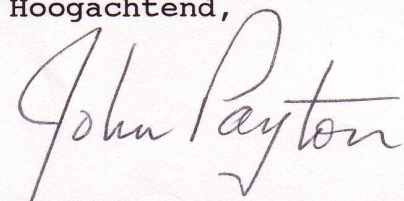
Geachte heer van den Wittenboer,

Gelieve hierbij een specificatie aan te treffen met betrekking tot de door ons verleende diensten in de afgelopen maand.

Kosten dienstverlening	f	735.00
BTW 17.5%	f	<u>128.63</u>
Totaal verschuldigd	f	<u>863.63</u> X
		=====

Ik verzoek u om dit bedrag binnen 30 dagen na dagtekening te voldoen door overmaking naar de Rabobank, rek.nr. 11.37.58.510, onder vermelding van bovenstaand declaratienummer.

Hoogachtend,


John W. Payton.

PAYTON
BUSINESS LEGAL ADVICE

Specificatie: 26/08/94 - 25/09/94

Zaak

Uren
Mr. de Zeeuw

Hitler's inferno

- advies	2.50
- gesprek 12/09/94	1.00

Totaal uren		4.50
Uurtarief	f	200.00
Subtotaal	f	700.00
Administratiekosten 5%	f	35.00
Kosten dienstverlening	f	735.00
BTW 17.5%	f	128.63
Totaal verschuldigd	f	863.63
		=====

PAYTON
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5611 CA Eindhoven
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John W. Payton, Esq.
Mr. W. de Zeeuw
Dutch Counsel
Mr. G. H. M. Rooijackers
Of Counsel

I.F.U.D.H.R.
Postbus 324
5660 AH Geldrop
T.a.v. de heer van den Wittenboer.

Declaratie: 940212

26 oktober 1994.

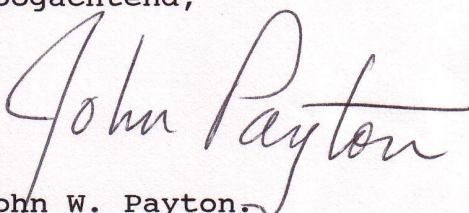
Geachte heer van den Wittenboer,

Gelieve hierbij een specificatie aan te treffen met betrekking tot de door ons verleende diensten in de afgelopen maand.

Kosten dienstverlening	f	210.00
BTW 17.5%	f	36.75
Totaal verschuldigd	f	<u>246.75</u>
		=====

Ik verzoek u om dit bedrag binnen 30 dagen na dagtekening te voldoen door overmaking naar de Rabobank, rek.nr. 11.37.58.510, onder vermelding van bovenstaand declaratienummer.

Hoogachtend,


John W. Payton.

PAYTON
BUSINESS LEGAL ADVICE

Specificatie: 26/09/94 - 25/10/94

Zaak

Uren
Mr. de Zeeuw

Hitler's inferno
- gesprek 11/10/94 1.00

Totaal uren		1.00
Uurtarief	f	<u>200.00</u>
Subtotaal	f	<u>200.00</u>
Administratiekosten 5%	f	<u>10.00</u>
Kosten dienstverlening	f	<u>210.00</u>
BTW 17.5%	f	<u>36.75</u>
Totaal verschuldigd	f	<u>246.75</u>
		=====

PAYTON
BUSINESS LEGAL ADVICE

Vestdijk 9
5611 CA Eindhoven
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Tel +31-40-465117
Fax +31-40-455202

John W. Payton, Esq.
Mr. W. de Zeeuw
Dutch Counsel
Mr. G. H. M. Rooijackers
Of Counsel

I.F.U.D.H.R.
Postbus 324
5660 AH Geldrop
T.a.v. de heer van den Wittenboer.

Declaratie: 940218

25 november 1994.

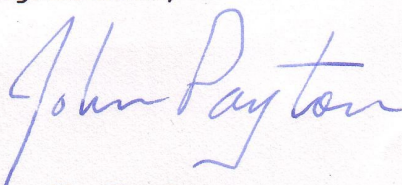
Geachte heer van den Wittenboer,

Gelieve hierbij een specificatie aan te treffen met betrekking tot de door ons verleende diensten in de afgelopen maand.

Kosten dienstverlening	f	315.00
BTW 17.5%	f	<u>55.13</u>
Totaal verschuldigd	f	<u>370.13</u>
		=====

Ik verzoek u om dit bedrag binnen 30 dagen na dagtekening te voldoen door overmaking naar de Rabobank, rek.nr. 11.37.58.510, onder vermelding van bovenstaand declaratienummer.

Hoogachtend,



John W. Payton.

PAYTON
BUSINESS LEGAL ADVICE

Specificatie: 26/10/94 - 25/11/94

Zaak

Uren
Mr. de Zeeuw

Hitler's inferno	
- gesprek 28/10/94	0.50
- meeting 11/11/94	1.00

Totaal uren		1.50
Uurtarief	f	200.00
Subtotaal	f	300.00
Administratiekosten 5%	f	15.00
Kosten dienstverlening	f	315.00
BTW 17.5%	f	55.13
Totaal verschuldigd	f	370.13
		=====

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Of Counsel

I.F.U.D.H.R.
Postbus 324
5660 AH Geldrop
T.a.v. de heer van den Wittenboer.

Declaratie: 950008

27 maart 1995.

Geachte heer van den Wittenboer,

Gelieve hierbij een specificatie aan te treffen met betrekking tot de door ons verleende diensten in de afgelopen maand.

Kosten dienstverlening	f	168.00
BTW 17.5%	f	<u>29.40</u>
Totaal verschuldigd	f	<u>197.40</u>

=====



Ik verzoek u om dit bedrag binnen 30 dagen na dagtekening te voldoen door overmaking naar de Rabobank, rek.nr. 11.37.58.510, onder vermelding van bovenstaand declaratienummer.

Hoogachtend,

John W. Payton.

PAYTON
BUSINESS LEGAL ADVICE

Specificatie: 26/02/95 - 25/03/95

Zaak

Uren
Mr. de Zeeuw

Hitler's inferno
- meeting 28/02/95 0.80

Totaal uren		0.80
Uurtarief	f	<u>200.00</u>
Subtotaal	f	<u>160.00</u>
Administratiekosten 5%	f	<u>8.00</u>
Kosten dienstverlening	f	<u>168.00</u>
BTW 17.5%	f	<u>29.40</u>
Totaal verschuldigd	f	<u>197.40</u>
		=====

EXECUTIVE SUMMARY

Fifteen years of experience gained from working in the American, Asian and European marketplaces enables Payton Business Legal Advice ("PBLA") to provide a unique selection of legal services, including the areas of :

◆ **U.S. LITIGATION**

Expert, efficient and economic solutions for dealing with the very un-European demands of the U.S. judicial system.

◆ **INTELLECTUAL PROPERTY RIGHTS**

In addition to the traditional fields of licensing patents, trademarks and know-how, PBLA has special expertise in exploiting licensing of software copyrights in the fast developing field of new media for interactive products.

◆ **LEGAL RISK MANAGEMENT**

The increasing awareness and exercise of legal rights has created a corresponding increase in legal risks. PBLA has developed a comprehensive system for analysing and managing the legal risks inherent in your business.

◆ **CORPORATE GOVERNANCE**

The Netherlands is an ideal location from which foreign companies can manage their European organisations. A widespread fluency in English among a highly skilled labour force, together with excellent access to the transportation structure of the European Union provides a firm foundation to an international company's decision to place a European organisation in Holland. PBLA can guide you in dealing with the formal requirements and procedures for doing business in the Netherlands.

It is our intention that this documentation will give you a clear and concise overview of the services we can provide for you. Should questions arise during your review of the more in-depth information contained in this brochure, or should you desire to discuss one or more issues of concern, please contact our office and arrange for a convenient appointment.

We at Payton Business Legal Advice look forward to being of service to you in the future.

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BUSINESS LEGAL ADVICE

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Tel +31-40-465117 - Fax +31-40-455202

LICENSING OF INTELLECTUAL PROPERTY RIGHTS

Payton Business Legal Advice benefits from 15 years of experience in licensing transactions between and among American, Asian and European clients. In addition to the traditional fields of licensing patents, trademarks and know-how, Payton Business Legal Advice has special expertise in exploiting licensing of software copyrights in the fast developing field of new media for interactive products, including CDI and Personal Digital Assistants. Licensing can benefit your company in two ways, viz. granting royalty-bearing licenses under your Intellectual Property Rights, and acquiring licenses under the rights of others.

Often overlooked aspects of licensing include:

- ◆ Establishing joint ventures;
- ◆ Licensing secret know-how to trustworthy parties in other markets;
- ◆ Licensing secret know-how from other parties;
- ◆ Exploiting well-known trademarks in new markets and territories; and
- ◆ Benefiting from non-exclusive licensing.

Effective exploitation of your Intellectual Property Rights can generate substantial royalty income. The experience and expertise offered by Payton Business Legal Advice can help your company achieve optimal exploitation of your intellectual property.

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CORPORATE GOVERNANCE

Dutch law prescribes a variety of formal requirements and procedures for doing business through Dutch subsidiaries or branch offices. Corporate Governance is the general term used to describe the process of complying with the formal requirements and procedures applicable to setting up, financing, operating, and/or liquidating a corporation (including a subsidiary) or other entity, particularly in its relationship with government agencies.

Aspects of Corporate Governance include:

- ◆ Setting up a subsidiary or a branch office;
- ◆ Establishing a holding structure in the Netherlands for your European subsidiaries;
- ◆ Designing or changing the Articles of Association of your subsidiary to meet the needs of your business;
- ◆ Issuing and/or transferring shares;
- ◆ Appointing corporate officers;
- ◆ Publishing the annual accounts;
- ◆ Organising the annual general meeting of shareholders and the meetings of other corporate bodies; and
- ◆ Legal aspects of employing and dismissing local personnel.

All of these activities involve extensive contacts with representatives of various Government agencies such as the Ministry of Justice, Municipal and Provincial authorities, tax authorities, and public unemployment and disability insurance association (GAK). The strength of Payton Business Legal Advice is our ability to act as an interface between your company and these agencies. Additionally, our network of specialists in such fields as trademarks and trade names registration, environmental and other issues can facilitate your smooth transition into doing business in the Netherlands.

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LEGAL RISK MANAGEMENT

From the moment your company enters into a contractual relationship, you inevitably create legal risks. Legal Risk Management is the process of establishing and maintaining procedures for identifying and avoiding the consequences of legal risks. Failure to manage your legal risks effectively can result in civil and/or criminal sanctions being imposed by (inter)national judicial institutions.

Regardless of size, specific areas of potential risk to a business include:

- ◆ Unauthorised representation;
- ◆ Conflicts among existing contractual arrangements;
- ◆ Anti-Trust and unfair business practices;
- ◆ Product liability; and
- ◆ Regulatory compliance with respect to issues such as employees, share certificates and environmental issues.

Certain contractual relationships by nature carry particularly high levels of risk. Such relationships include:

- ◆ Mergers and joint ventures;
- ◆ Acquisitions and divestitures; and
- ◆ Licensing Agreements.

THE LEGAL AUDIT -- YOUR KEY TO LEGAL RISK MANAGEMENT

Payton Business Legal Advice has developed a comprehensive system for analysing and managing the legal risks inherent in your business, which we refer to as "The Legal Audit". The Legal Audit is an analysis of all contracts and other legal documents which define a company's relationship with other companies and with Government organisations, and the legal risks inherent in these relationships.

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U.S. LITIGATION

The high rewards and unlimited opportunities offered by the U.S. marketplace carry with them the responsibility of working within the U.S. legal system. The following aspects of the American legal system have broad similarities to European practice, but can have very different consequences.

TYPES OF U.S. LITIGATION

◆ Product Liability

The concept of Product Liability in America is essentially identical to that of European concepts, in that the manufacturer is responsible for the damage caused by the products he creates. The main difference lies in the high jury damage awards of the American judicial system.

◆ Anti-Trust

American Anti-Trust concepts are broadly similar to European anti-cartel concepts. However, the already high jury damage awards are automatically tripled as punishment for violations.

◆ Pre-Merger Notification

Unlike European procedures, U.S. Pre-Merger Notification may also entail a U.S. Government request to conduct an extensive search of the files of the companies involved (Document Discovery).

PRE-TRIAL DISCOVERY

One of the surprising aspects of U.S. litigation in these three areas is its reliance on Pre-Trial (or Pre-Merger) Discovery as a tool for providing each party with the evidence in the possession of the other, thereby allowing the parties an insight into the strength of each other's position. Your opponent, or in the case of mergers, the U.S. Government, has a right to all relevant information discovered according to the rules applicable to Discovery. Failure to comply with Discovery requests can lead to a verdict in favour of your opponent.

Pre-Trial (or Pre-Merger) Discovery includes:

◆ Interrogatories

Interrogatories are written questions requesting specific information, documents and/or objects, and must be reasonably calculated to lead to the discovery of admissible evidence without being unduly burdensome to the other party.

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◆ **Document Discovery**

Document Discovery is an extremely invasive aspect of Discovery requiring the production of copies of documents that are relevant to the case and responsive to specific document requests. It can often involve the review of hundreds of thousands of pages of files, and the production of tens of thousands of pages of copies.

Virtually all files kept by a company or any of its employees are subject to Document Discovery.

◆ **Depositions**

Depositions are interviews, translated when necessary, under oath of one party or its employees by the attorney of the other party. Questions and answers are written down by an official court reporter, and may be submitted in evidence. In Europe, the nearest U.S. Consul often administers the oath.

MANAGING U.S. LITIGATION

Payton Business Legal Advice provides an expert, efficient and economic solution for dealing with the very un-European demands of the U.S. judicial system. We work as a cost-effective team of specialists in the field of in-house preparation for U.S. litigation. Our services cover all aspects of Pre-Trial Discovery including:

- ◆ Preliminary file searches in order to assist your lead attorney in defining the issues involved;
- ◆ Co-ordination of responses to Interrogatories;
- ◆ Comprehensive file searches in response to document requests;
- ◆ Arranging document copying, translation and shipment services; and
- ◆ Co-ordination of the deposition process including witness preparation and arranging for interpretation, Consular and court reporting services.

Fifteen years of expertise gained from working within the European marketplace enables us to provide a sensitive and experienced interface between you and your U.S. lawyer. Our services can be of essential value to you at a time when you are facing a baffling and seemingly unfair process.

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BUNDESKANZLERAMT

121 - K - 204 857/95/0001
(Bei Antwort bitte angeben)

Bundeskanzleramt 53106 Bonn

53106 Bonn, den 15. Mai 1995

Adenauerallee 141

Fernruf 0228/56- 0
oder 0228/560 (Vermittlung)

Telex 886750
Telefax 0228/562357

An
Intermediary Foundation of the
Universal Declaration of Human Rights
z.Hd. des Vorsitzenden
Herrn J.P. van den Wittenboer
Postbox: 3 24
5660 AH Geldrop
Niederlande

Sehr geehrter Herr van den Wittenboer,

ich bestätige den Eingang Ihres Schreibens vom 8. Mai 1995 zu dem Projekt "Hitler's Inferno". Darin geht es um Urheberrechte, die aufgrund besatzungsrechtlicher Maßnahmen nach dem 2. Weltkrieg auf der Grundlage des Gesetzes zur Befreiung von Nationalsozialismus und Militarismus dem Freistaat Bayern übertragen worden sind.

Ich habe deshalb Ihr Schreiben sowie sämtliche mitgesandten Anlagen (darunter 2 Tonband-Cassetten) dem Bayerischen Staatsministerium der Finanzen zugeleitet. Weitere Antwort wollen Sie bitte von dort erwarten.

Mit freundlichen Grüßen
Im Auftrag


Germe Imann



"Orphan" works: informal deal done between MEPs and Council

Committees: Committee on Legal Affairs

A photo, a film or a poem that is covered by a copyright, but whose right holder cannot be found, could be made publicly available across the EU, under draft legislation informally agreed by Parliament and Council representatives on Wednesday. This legislation would allow everyone to access such "orphan works" and take forward the project of making Europe's cultural heritage available online.

Lidia Geringer de Oedenberg (S&D, PL), who is steering the legislation through Parliament and led the negotiations, welcomed the deal as a: "first step towards harmonisation of copyright rules in the EU". "The regulation will promote culture and finally make it possible to make some hidden treasures available to the general public", she added at the end of the negotiating round.

Parliament's negotiating team secured provisions to make it safer and easier for public institutions such as museums and libraries to search for and use orphan works. These provisions include clear rules on compensation for right holders who come forward after a work has been placed on line and a possibility for institutions to use any revenue from its use to pay search and digitisation costs.

Today, digitising an orphan work can be difficult if not impossible, since in absence of the right holder there is no way to obtain permission to do so. The new rules would protect institutions using orphan works from future copyright infringement claims, and thus avoid court cases like that in the US, in which a Google project to digitise and share all kinds of books, including orphan works, was blocked on the grounds that the orphan works question should be settled by legislation, not private agreements.

"Diligent" search to protect copyright

According to the agreed text, a work would be deemed to be orphan if, after a "diligent" search made in good faith, it was not possible to identify or locate the copyright holder. The draft legislation lays down criteria for carrying out the search.

Works granted orphan status would be then made public, through digitisation and only for non-profit purposes. A work deemed to be "orphan" in any one Member State would be deemed as such throughout the EU. This would apply to any audiovisual or printed material, including a photograph or an illustration embedded in a book, published or broadcast in any EU country. It would also apply to works not published but nonetheless made available by institutions, provided that they could reasonably assume that the right holder would not object to this act.

Compensation if copyright holder shows up

MEPs agreed that the right holder should be entitled to put an end to the orphan status of a work at any time and claim an appropriate compensation for the use made out of it.

Press release

They nonetheless inserted a provision to protect public institutions from the risk of having to pay large sums to authors who show up later. compensation would have to be calculated case by case, taking account of the actual damage done to the author's interests and the fact that the use was non-commercial. This should ensure that compensation payments remain small.

Council representatives also agreed to a proposal by MEPs that a new article be inserted in the draft legislation to allow public institutions to generate some revenue from the use of an orphan work (e.g. goods sold in a museum shop). All of this revenue would have to be used to pay for the search and the digitisation process.

Next steps

The outcome will need final approval from the Committee on Legal Affairs, Parliament as a whole and in the Council.

Contact :

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EUROPEAN COMMISSION

Brussels, 24.5.2011
COM(2011) 289 final

2011/0136 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain permitted uses of orphan works

(Text with EEA relevance)

{ SEC(2011) 615 final }

{ SEC(2011) 616 final }

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Prior authorisations are necessary to make works protected by copyright available to the public in an online digital library or archive. When the relevant copyright owner cannot be identified or found the works in question are known as orphan works. Consequently, the necessary authorisations to make available works online cannot be obtained. Libraries or other institutions that make works available online to the public without prior authorisation risk infringing copyright.

The main objective of this proposal is to create a legal framework to ensure the lawful, cross-border online access to orphan works contained in online digital libraries or archives operated by a variety of institutions that are specified in the proposal when such orphan works are used in the pursuance of the public interest mission of such institutions. Such works include works which are published in the form of books, journals, newspapers, magazines or other writings, including works embedded in them, as well as audiovisual and cinematographic works in the collections of film heritage institutions, and audio, audiovisual and cinematographic works contained in the archives of public service broadcasting organisations and produced by them. With regard to the archives of public service broadcasters and the special position of public service broadcasters as producers there is a need to limit the phenomena of orphan works by providing a cut off date for works that are within the scope of the proposal.

This aim is to be achieved through a system of mutual recognition of the orphan status of a work. In order to establish the "orphan work" status, libraries, educational establishments, museums or archives, film heritage institutions and public service broadcasting organisations are required to carry out a prior diligent search, in line with the requirements specified in the proposed directive, in the Member State where the work was first published. Once the diligent search establishes the "orphan status" of a work, the work in question will be deemed an orphan work throughout the EU, obviating the need for multiple diligent searches. On this basis, it will be possible to make orphan works available online for cultural and educational purposes without prior authorisation unless the owner of the work puts an end to the orphan status.

This initiative builds on the Commission's 2006 Recommendation on the digitisation and online accessibility of cultural content and digital preservation¹. Despite the Recommendation, only a handful of Member States have implemented orphan works legislation. The few existing national solutions are circumscribed by the fact that they limit online access to citizens resident in their national territories.

The creation of a legal framework to facilitate the cross-border digitisation and dissemination of orphan works in the single market is also one of the key actions identified in the Digital Agenda for Europe² which is part of the Europe 2020 Strategy³.

¹ Commission Recommendation 2006/585/EC of 24 August 2006 on the digitisation and online accessibility of cultural content and digital preservation (OJ L 236, 31.8.2006, p. 28-30).

² A Digital Agenda for Europe - COM(2010) 245.

³ Europe 2020: A strategy for smart, sustainable and inclusive growth:
http://ec.europa.eu/eu2020/index_en.htm

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

• Consultation of interested parties

In 2006, a High Level Expert Group on Digital Libraries was established bringing together stakeholders concerned with digitization and online accessibility of cultural material, including orphan works⁴. The Group adopted a "Final Report on Digital Preservation, Orphan Works and Out-of-Print Works"⁵. A "Memorandum of Understanding on Diligent Search Guidelines for Orphan Works" was signed by representatives of libraries, archives and rightholders⁶.

In 2008, the Commission's Green Paper on Copyright in the Knowledge Economy⁷ sought the views of stakeholders on, *inter alia*, the necessity of further action in relation to orphan works⁸. On 19 October 2009, the Commission adopted the follow-up Communication on Copyright in the Knowledge Economy⁹ in which it announced that it would carry out an impact assessment on how to deal with orphan works in the EU.

On 26 October 2009, the Commission held a public hearing where all interested parties presented their views on orphan works. On 10 November 2009, the Swedish Presidency and the European Parliament organised a joint hearing on orphan works and access to works for the visually impaired.

Throughout 2009-2010, the Commission services held meetings with a variety of stakeholders on a bilateral basis to discuss the relevant issues in more detail.

• Impact assessment

The impact assessment analyses six options: (1) do nothing, (2) a statutory exception to copyright, (3) extended collective licensing, (4) an orphan-specific licence granted by collecting societies, (5) an orphan-specific licence granted by a public body, and (6) the mutual recognition of national solutions regarding orphan works.

All policy options (except Option 1) are premised on the adoption of a directive that will require all Member States to enact specific orphan works legislation within a specified timeframe. All policy options, except Option 3, are premised on the requirement that a diligent search is necessary prior to the making available of an orphan work in an online digital library.

⁴ Commission Decision of 27 February 2006 on setting up a High Level Expert Group on Digital Libraries (OJ L 63, 4.3.2006, p. 25-27). The Group was subsequently renewed by Commission Decision of 25 March 2009 (OJ 82, 28.3.2009, p. 9-11).

⁵ http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/index_en.htm

⁶ http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

⁷ COM(2008) 466.

⁸ Responses to the consultation are available at http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/consultation_copyright&vm=detailed&sb=Title. See Annex, Chapters 1 and 2 for the analysis of the responses.

⁹ COM(2009) 532.

The statutory exception (Option 2) would avoid the burden of obtaining a copyright licence but maintain the prior diligent search. However, this option provides for less legal certainty as there is no third party certification of the diligent search.

Option 3, the model of "extended collective licences" assumes that, once a collecting society authorises a library to make books available on a website, this licence, by virtue of a statutory extension, will cover all works in that category, including orphan works (i.e., books, films). The collecting society is considered to represent such "outliers" independent of whether it has carried out a diligent search to identify or locate the author. The absence of a diligent search prevents an approach based on mutual recognition of the orphan work status. An extended collective licence is also normally only valid in the national territory in which the statutory presumption applies.

The specific licence for orphan works (Option 4) provides libraries and the other beneficiaries with a high level of legal certainty against damage claims by reappearing owners. This option requires both a diligent search to determine the orphan status prior to the granting of the licence and a specific licensing arrangement pertaining to orphan works.

The government licence covering orphan works (Option 5) constitutes a public certification of the diligent search and thus grants a high level of legal certainty to the digital library. But this certainty comes at a price in terms of administrative burden. This is why earlier incarnations of this system have had limited impact and are not used in relation to large scale digital library projects.

An approach based on mutual recognition of the orphan status (Option 6) allows libraries and other beneficiaries to enjoy legal certainty as to the "orphan status" of a particular work. Mutual recognition ensures that the orphan works contained in a digital library would be available to citizens across Europe.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal deals with the diligent search necessary to identify whether a particular work is an orphan work and, once this has been established, to make it legal to make this work available to the public online under certain conditions and for specific purposes. The proposal also clarifies the application of extended collective licences to works which are potentially orphan works.

- **Legal basis**

Article 114 TFEU

- **Subsidiarity principle**

A legislative proposal in the form of a directive is necessary because voluntary approaches, notably Commission Recommendation 2006/585/EC of 24 August 2006, have not produced the desired result. In addition, the coexistence of uncoordinated national approaches

governing orphan works in online libraries makes it difficult for a library to make orphan works available across EU Member States¹⁰.

- **Proportionality principle**

Because the orphan work problem is a major impediment to the creation of digital libraries, a coherent EU framework for online access to orphan works is the least intrusive option to achieve the desired result. All other approaches would require significantly more administrative overhead and licensing infrastructures just for orphan works.

- **Choice of instruments**

Proposed instrument: Directive.

Main articles of the proposal

Article 1 sets out the scope and subject matter of the Directive as a variety of material contained in public libraries, educational establishments, museums and archives as well as in the collections of film heritage institutions and archives of public service broadcasting organisations. In the print sector, it also covers visual works such as photographs and illustrations contained in these published works.

Article 2 contains the definition of an orphan work. The definition of an orphan work incorporates the requirement of a diligent search.

Article 3 explains how the diligent search is to be carried out by those who are permitted to use orphan works. Article 3 clarifies that a diligent search need only be carried out in the Member State of first publication of the work.

Article 4 establishes the principle of mutual recognition whereby a work deemed to be an orphan work after a diligent search carried out in accordance with Article 3 shall be considered an orphan work in all Member States.

Article 5 concerns the possibility to put an end to the orphan work status.

Article 6 enumerates the uses that the named beneficiaries are permitted to undertake with respect to orphan works (to make them available to the public, within the meaning of Article 3 of Directive 2001/29/EC, and to reproduce such works, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of achieving their public interest mission).

Article 7 specifies how Member States may permit certain additional uses under specific conditions.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

¹⁰ In some Member States, e.g. France, preparatory work on a legislative solution expressly acknowledges that a European solution is required - Conseil Supérieur de la Propriété Littéraire et Artistique *Commission sur les œuvres orphelines*, p. 19.

5. OPTIONAL ELEMENTS

- **European Economic Area**

The proposed act concerns an EEA matter and should extend to the European Economic Area.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain permitted uses of orphan works

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 49, 56 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Libraries, museums, archives, educational establishments, film heritage institutions and public service broadcasting organisations are engaged in large-scale digitisation of their collections or archives in order to create European Digital Libraries. Libraries, museums, archives, educational establishments, film heritage institutions and public service broadcasting organisations in the Member States contribute to the preservation and dissemination of European cultural heritage, which is also important for the creation of European Digital Libraries, such as Europeana. Technologies for mass scale digitisation of print materials and for search and indexing enhance the research value of the libraries' collections.
- (2) The need to promote free movement of knowledge and innovation in the internal market is an important component of the Europe 2020 Strategy, as set out in the Communication from the Commission "Europe 2020: A strategy for smart, sustainable and inclusive growth"¹², which includes as one of its flagship initiatives the development of a Digital Agenda for Europe.
- (3) Creating a legal framework to facilitate the digitisation and dissemination of works for which no author is identified or, even if identified, is not located, so called orphan works, is a key action of the Digital Agenda for Europe, as set out in the

¹¹ OJ C , , p. .
¹² COM(2010) 2020.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – A Digital Agenda for Europe¹³.

- (4) The exclusive rights for authors of reproduction and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society¹⁴, require the consent of the author prior to the digitisation and making available of a work.
- (5) In the case of orphan works, such prior consent to carry out acts of reproduction or of making available to the public cannot be obtained.
- (6) Different approaches in the Member States to the recognition of orphan work status can present obstacles to the functioning of the internal market and the use and cross-border access to orphan works. Such different approaches can also result in restrictions on the free movement of goods and services which incorporate cultural content. Therefore, ensuring the mutual recognition of such status is appropriate.
- (7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, educational establishments, archives, film heritage institutions and public service broadcasting organisations.
- (8) Cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of broadcasting organisations are concerned.
- (9) For the purposes of this Directive, cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations should be understood as including works commissioned by such organisations for their exclusive exploitation.
- (10) The creation of large online libraries facilitate electronic search and discovery tools which open up new sources of discovery for researchers and academics that would otherwise have to content themselves with more traditional and analogue search methods.
- (11) For reasons of international comity, this Directive should only apply to works that are first published or broadcast in a Member State.
- (12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the author should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations.

¹³ COM(2010) 245.

¹⁴ OJ L 167, 22.6.2001, p. 10.

- (13) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright in the Union. A diligent search should involve the consultation of publicly accessible databases that supply information on the copyright status of a work. Moreover, in order to avoid duplication of costly digitisation, Member States should ensure that use of orphan works by the organisations referred to in this Directive is recorded in a publicly accessible database. To the extent possible, publicly accessible databases of search results and use of orphan works should be designed and implemented so as to permit interlinkage with each other on a pan-European level and consultation thereof through a single entry point.
- (14) Orphan works may have several authors or include other works or protected subject matter. This Directive should not affect the rights of known or identified rightholders.
- (15) In order to avoid duplication of search efforts, a diligent search should be conducted only in the Member State where the work was first published or broadcast. In order to enable other Member States to ascertain whether the orphan status of a work has been established in another Member State, Member States should ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database.
- (16) It is appropriate to provide that authors are entitled to put an end to the orphan status in case they come forward to claim their works.
- (17) In order to promote learning and culture, Member States should permit libraries, educational establishments and museums which are publicly accessible, as well as archives, film heritage institutions and public service broadcasting organisations, to make available and reproduce orphan works, provided such use fulfils their public interest missions, notably preservation, restoration and the provision of cultural and educational access to works contained in their collections. Film heritage institutions should, for the purposes of this Directive, cover organisations designated by Member States to collect, catalogue, preserve and restore films forming part of their cultural heritage.
- (18) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that libraries, educational establishments, museums or archives and film heritage institutions may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation and making available of orphan works. These agreements may include financial contributions by such partners.
- (19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State are also available in other Member States. Publicly accessible libraries, educational establishments, museum, archives, film heritage institutions and public service broadcasting organisations that use an orphan work in order to achieve their public interest missions should be able to make the orphan work available to the public in other Member States.
- (20) This Directive should be without prejudice to existing arrangements in the Member States concerning the management of rights such as extended collective licences.

- (21) Member States should also be allowed to permit the use of orphan works for purposes which go beyond the public interest missions of the organisations covered by this Directive. In such circumstances, the rights and legitimate interests of rightholders should be protected.
- (22) When a Member State authorises, under the conditions established in this Directive, the use of orphan works by publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service broadcasting organisations for purposes beyond their public interest mission, rightholders who come forward to claim their works should be remunerated. Such remuneration should take account of the type of work and the use concerned. Member States may provide that revenues collected from such use of orphan works for the purpose of remuneration but which are unclaimed after the expiry of the period fixed in accordance with this Directive should contribute to financing rights information sources that will facilitate diligent search, by low-cost and automated means, in respect of categories of works that fall actually or potentially within the scope of application of this Directive.
- (23) Since the objectives of the action to be taken, namely legal certainty with respect to the use of orphan works, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity of the rules governing the use of orphan works be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not exceed what is necessary to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

1. This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and public service broadcasting organizations.
2. This Directive applies to works first published or broadcast in a Member State and which are:
 - (1) Works published in the form of books, journals, newspapers, magazines or other writings, and which are contained in the collections of publicly accessible libraries, educational establishments, museums or archives, or
 - (2) Cinematographic or audiovisual works contained in the collections of film heritage institutions, or
 - (3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives.

Article 2
Orphan works

1. A work shall be considered an orphan work if the rightholder in the work is not identified or, even if identified, is not located after a diligent search for the rightholder has been carried out and recorded in accordance with Article 3.
2. Where a work has more than one rightholder, and one of the rightholders has been identified and located, that work shall not be considered an orphan work.

Article 3
Diligent search

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question.
2. The sources that are appropriate for each category of works shall be determined by each Member State, in consultation with rightholders and users, and include, the sources listed in the Annex.
3. A diligent search is required to be carried out only in the Member State of first publication or broadcast.
4. Member States shall ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database.

Article 4
Mutual recognition of orphan work status

A work which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States.

Article 5
End of orphan work status

Member States shall ensure that a rightholder in a work considered to be orphan has, at any time, the possibility of putting an end to the orphan status.

Article 6
Permitted uses of orphan works

1. Member States shall ensure that the organisations referred to in Article 1(1) are permitted to use an orphan work in the following ways:
 - (a) by making the orphan work available, within the meaning of Article 3 of Directive 2001/29/EC;

- (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitization, making available, indexing, cataloguing, preservation or restoration.
- 2. However, unless otherwise provided in Article 7, the organisations referred to in Article 1(1) may not use orphan works in order to achieve aims other than their public interest missions, notably preservation, restoration and the provision of cultural and educational access to works contained in their collections.
- 3. This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public interest missions.
- 4. Member States shall ensure that the organisations referred to in Article 1(1), when using orphan works in accordance with paragraph 1, maintain records of their diligent search and publicly accessible records of use.

Article 7 *Authorised uses of orphan works*

- 1. Member States may authorise the organisations referred to in Article 1(1) to use an orphan work for purposes other than those referred to in Article 6(2), provided that:
 - (1) the organisations referred to in Article 1(1) maintain records of their diligent search;
 - (2) the organisations maintain publicly accessible records of their use of orphan works;
 - (3) in the case of an orphan work where a rightholder has been identified but not located, the name of the rightholder is indicated in any use of the work;
 - (4) rightholders which put an end to the orphan status of the work, within the meaning of Article 5, are remunerated for the use that has been made of the work by the organisations referred to in Article 1(1);
 - (5) rightholders may claim their remuneration under point (4) within a period fixed by Member States and which shall not be less than five years from the date of the act giving rise to the claim.
- 2. Member States may chose the means for authorising use within the meaning of paragraph 1 and remain free to decide on the use of any revenues which are unclaimed after the expiry of the period fixed in accordance with paragraph 1(5).

Article 8 *Continued application of other legal provisions*

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition,

trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract.

Article 9 *Application in time*

1. The provisions of this Directive shall apply in respect of all works referred to in Article 1 which are, on *[transposition date]*, protected by the Member States' legislation in the field of copyright.
2. This Directive shall apply without prejudice to any acts concluded and rights acquired before *[transposition date]*.

Article 10 *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11 *Review clause*

The Commission shall keep under constant review the development of rights information sources and shall, at the latest one year after the entry into force of this Directive, and at annual intervals thereafter, submit a report concerning the possible inclusion in the scope of application of this Directive of works or other protected subject matter not currently included in such scope, and in particular phonograms and stand alone photographs and other images.

By *[one year after transposition date]*, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee, a report on the application of this Directive, in the light of the development of digital libraries.

When necessary, in particular to ensure the functioning of the Internal Market, the Commission shall submit proposals for the amendment of this Directive.

Article 12 *Entry into Force*

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 13

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

The sources referred to in Article 3(2) shall be the following:

- (1) For published books:
 - (a) Legal deposit;
 - (b) Existing databases and registries, including ARROW (Accessible Registries of Rights Information and Orphan Works) and WATCH (Writers, Artists and their Copyright Holders) and the ISBN (International Standard Book Number);
 - (c) The databases of the relevant collecting societies, in particular reproduction rights organisations.
- (2) For journals and periodicals:
 - (a) The ISSN (International Standard Serial Number) for periodical publications;
 - (b) Indexes and catalogues from library holdings and collections.
- (3) For newspapers and magazines:
 - (a) The publishers association in the respective country and the authors and journalists associations;
 - (b) Legal deposit;
 - (c) The databases of relevant collecting society including Reproduction rights organisations.
- (4) For visual works, including fine art, photography, illustration, design, architecture, sketches of the latter works and others that are contained in books, journals, newspapers and magazines:
 - (a) The sources referred to in points (1), (2) and (3);
 - (b) The databases of the relevant collecting societies in particular for visual arts and including reproduction rights organisations;
 - (c) The databases of picture agencies where applicable.
- (5) For audiovisual works contained in the collections of film heritage institutions and public service broadcasting organisations:
 - (a) Legal deposit;
 - (b) Databases of film heritage institutions and national libraries;
 - (c) Databases with relevant standards and identifiers such as ISAN for audiovisual material;
 - (d) The databases of the relevant collecting societies in particular for authors, performers, phonogram producers and audiovisual producers.